

BILL NO. G-76-10-50

*General Ordinance To* *Wickham*

PROPOSED AMENDMENT TO  
GENERAL ORDINANCE NO. G-23-76.

AN ORDINANCE licensing and  
regulating massage establishments  
and related enterprises.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
OF THE CITY OF FORT WAYNE, INDIANA:

That General Ordinance No. G-23-76 be amended as  
follows with each and every section to be as follows:

SECTION 1. DEFINITIONS. For the purposes of this  
section the following words and phrases shall have the meanings  
respectively ascribed to them:

1.1 "Massage" shall mean any means of treating the  
external parts of the body by applying any pressure on, friction  
against or stroking, kneading, rubbing, tapping with the hands  
or instruments.

1.2 "Massage Establishment" shall mean any building,  
room, place or establishment, other than a regularly licensed  
hospital or dispensary, where nonmedical and nonsurgical  
manipulative exercises are practiced upon the human body with  
or without the use of mechanical or bath devices, by any person  
not a physician, osteopath, chiropractor or physical therapist  
duly registered with and licensed by the state.

1.3 "Massage Therapist" shall mean a person who  
practices, administers all or any of the methods of treatment  
of massage; any activity licensed by the State of Indiana is  
excluded from the meaning of this term.

1.4 "Employee" shall mean a person other than a  
massage therapist who renders any service for the operator  
and who receives compensation directly or indirectly from the  
operator, but has no physical contact with customers or clients.  
The term "employee" shall include the manager of the massage  
establishment, who is not also the operator.

1.5 "Operator" shall mean any person, partnership  
or corporation who owns or operates a massage establishment.

## SECTION 2. LICENSES.

2.1 No person shall give or administer a massage  
without first obtaining a license therefor from the City  
Controller as provided in this ordinance.

2.2 Each person who operates, conducts, owns or  
maintains a massage establishment shall first obtain an operator's  
license therefor.

2.3 Each employee of the massage establishment shall  
obtain an employee's license before rendering any services in  
or for a massage establishment.

## SECTION 3. OPERATING REGULATIONS.

3.1 No massage establishment shall be operated or  
conducted in any district not permitted by the Fort Wayne Zoning  
Ordinance, Chapter 33 of the Code of the City of Fort Wayne,  
Indiana, 1974.

APPROVED AS TO FORM  
AND LEGALITY.

3.2 All licensees under this ordinance shall be subject to all provisions of this ordinance and any other city ordinances, county ordinances, and state statutes and to the regulations of the various administrative bodies of the city, county and state, the violation of which regulations, ordinances or statutes shall be grounds for revocation of their licenses.

3.3 It shall be unlawful for any person to be employed by any operator under this ordinance, or to be within view of any of the services rendered by a massage establishment, who has not reached the age of twenty-one (21) years.

3.4 No massage establishment holding a license under this ordinance shall depict, place, publish, distribute or cause to be depicted, placed, published, distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to the prospective patrons that any services are available which would constitute a violation of the criminal of the state. All advertisements shall contain the number of the city license held by the massage establishment.

3.5 No person holding a license under this ordinance shall perform a massage on a person of the opposite sex.

3.6 No operator shall employ unlicensed personnel.

3.7 An operator shall notify the City Controller in writing of a discharge of any employee or massage therapist as well as his hiring of any employee or massage therapist.

#### SECTION 4. INSPECTIONS.

4.1 It shall be the duty of the City Controller through duly authorized representatives to inspect massage establishments for compliance with this ordinance.

4.2 Inspections are to be made at reasonable times, with due regard to the nature of the business to be inspected.

4.3 Upon showing the proper credentials, the representatives of the City Controller, including city police officers, shall be entitled to inspect portions of the massage establishment open to the public for compliance with this ordinance.

#### SECTION 5. APPLICATION FOR OPERATOR'S LICENSE.

5.1 Application for an operator's license required by this ordinance shall be made to the City Controller on application forms prescribed by him. The application for a license shall contain the following information and shall be signed and verified by the applicant:

- (a) The name of the applicant;
- (b) The residence address and Social Security number of the applicant;
- (c) The business address of the applicant;
- (d) The number of massage tables, shower stalls, bath stalls or other such individual units;
- (e) The birth date and citizenship of the applicant, in case of individuals; and of the manager and officers, in the case of a corporation;
- (f) The name, address, age, citizenship and job designation of each person connected with the applicant's establishment;
- (g) Whether the applicant or the manager or officers have ever been previously engaged in operating a massage establishment;

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- 2 (h) Whether within the past five (5) years the
- 3 applicant, or in the case of a partnership,
- 4 each partner, or in the case of a corporation,
- 5 its manager, officers, directors or stockholders,
- 6 has been convicted of any act of violence,
- 7 moral turpitude, sex offense or prior violation
- 8 of this ordinance;
- 9 (i) The type of license being applied for by
- 10 the applicant.

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12 5.2 A separate license shall be obtained for each

13 message establishment operated by the individual, partnership

14 or corporation.

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16 SECTION 6. APPLICATION FOR MESSAGE THERAPIST LICENSE.

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18 6.1 Each individual who is to be employed as a

19 message therapist shall file a verified application for a

20 message therapist's license. Such application shall be on

21 a form supplied by the City Controller and shall contain the

22 following information:

- 23
- 24 (a) The name, residence address and Social
- 25 Security number of the applicant;
- 26 (b) The birth date of the applicant;
- 27 (c) The sex of the applicant;
- 28 (d) The citizenship of the applicant;
- 29 (e) Whether, within the past five (5) years, the
- 30 applicant has been convicted of any public
- 31 offense concerning an act of violence, moral
- 32 turpitude, sex offense or prior violation
- 33 of this ordinance;
- 34 (f) A statement of how the applicant received
- 35 his or her training in the work of message
- 36 therapist and a copy of the diploma or
- 37 certificate obtained, if any;
- 38 (g) The message establishment, if any, at which
- 39 the applicant expects to be employed.

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41 SECTION 7. APPLICATION FOR EMPLOYEE LICENSE.

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43 7.1 Each individual who is to be an employee of a

44 message establishment shall file a verified application for

45 an employee's license. Such application shall be on a form

46 supplied by the City Controller and shall contain the following

47 information:

- 48
- 49 (a) The name, residence address and Social
- 50 Security number of the applicant;
- 51 (b) The birth date of the applicant;
- 52 (c) The sex of the applicant;
- 53 (d) The citizenship of the applicant;
- 54 (e) Whether, within the past five (5) years,
- 55 the applicant has been convicted of any
- 56 public offense concerning an act of
- 57 violence, moral turpitude, sex offense
- 58 or prior violation of this ordinance;
- 59 (f) The nature of the work performed;
- 60 (g) The name of the establishment, if any,
- 61 at which the applicant expects to be
- 62 employed.

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64 SECTION 8. HEALTH CERTIFICATE.

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66 Along with the application for a license required by

67 this ordinance, there shall be submitted a certificate from

68 the City County Board of Health on a form prescribed by the

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2 City Controller certifying that the applicant is free from  
3 communicable diseases and that an examination has been made  
4 within thirty (30) days prior to the application for the  
5 license sought.

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11 SECTION 9. LICENSE FEES.

12 9.1 Each person who desires a massage establishment  
13 operator's license shall pay an annual fee of One Hundred  
14 (\$100.00) Dollars.

15 9.2 The applicant for a massage therapist's license  
16 shall pay an annual fee of Fifty (\$50.00) Dollars.

17 9.3 The applicant for an employee's license in a  
18 massage establishment shall pay an annual fee of Ten (\$10.00)  
19 Dollars.

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32 SECTION 10. COMPLAINTS.

33 All complaints of alleged violations of the provisions  
34 of this ordinance shall be made in writing to the City Controller.

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SECTION 11. INVESTIGATION OF APPLICANT; GROUNDS FOR  
DENIAL, REVOCATION OR SUSPENSION OF A LICENSE.

11.1 The City Controller, before issuing any license  
pursuant to this ordinance, shall investigate the character of  
the applicant, and its officers, directors and manager if it  
is a corporation, as well as the premises upon which the business  
is sought to be conducted. No license shall be issued if the  
City Controller shall find:

- (a) That the applicant has, within the past five (5) years, held a license under this ordinance or the law of any other place which was revoked.
- (b) That the premises sought to be licensed failed to comply in any manner with this ordinance or with other ordinances and laws applicable thereof;
- (c) That the applicant has, within the past five (5) years, been convicted of any act of violence, moral turpitude, sex offense or prior violation of this ordinance;
- (d) That the applicant cannot provide a certificate from a licensed medical practitioner certifying that the applicant is free from communicable diseases and that an examination has been made within thirty (30) days prior to the date of application;
- (e) That the applicant has made a false statement on the application, or in the case of multiple applications filed by one applicant, a false statement on any application filed for the same licensing year;
- (f) That the application was not completely filled out or that the application was not correctly filled out.

These reasons shall be the exclusive reasons for the denial of a license application.

11.2 Upon the determination by the City Controller that the license applied for ought not to be issued pursuant to Section 11.1, a notice shall be sent to the applicant stating the reason for the denial, the right to a hearing to appeal the denial, and the right to correct any defect in the application or premises.

11.3 Any license issued for a massage therapist or employee may be revoked or suspended by the City Controller after hearing for good cause. Cause for revocation includes all the grounds for which a license may be denied pursuant to Section 11.1.

11.4 Any license issued for an operator may be revoked or suspended by the City Controller after hearing for good cause. Cause for revocation includes:

(a) All the grounds for which a license may be denied pursuant to Section 11.1;

(b) The employment of unlicensed personnel;

(c) The conviction of an employee of the operator for prostitution which act was committed on the premises of the operator.

11.5 After a hearing on a written complaint filed pursuant to this ordinance against a license, if the City Controller determines that the license should be revoked or suspended, no refund of the license fee shall be made.

## SECTION 12. HEARINGS AND APPEALS.

12.1 When a hearing is requested by an applicant on denial of a license, not less than ten (10) days written notice shall be given to the applicant which notice shall designate the time and place where the hearing will be held.

12.2 Where a hearing is set by the City Controller in a revocation or suspension procedure, the licensee shall receive not less than twenty (20) days written notice, which notice shall contain a notice of the charges made, as well as time and place where the hearing will be held.

12.3 At a hearing held under either Section 12.1 or Section 12.2, the applicant shall have the right to present witnesses, testify and cross-examine any other witnesses. Proceedings shall be conducted under oath.

12.4 The City Controller shall preside at the hearing and shall make the final determination.

12.5 If any decision adverse to the applicant or licensee is made by the City Controller after a hearing as provided above, the City Controller shall provide the applicant or licensee with a written notice of reason as well as a notice of the applicant's or licensee's right to appeal to the Courts of the State of Indiana.

12.6 After hearing, the City Controller may grant, deny, revoke, suspend or take no action on a license. Suspension may be for no longer than the term remaining on the license.

## SECTION 13. LICENSE LOCATION AND TERM.

13.1 All operators, massage therapists, and employees licensed under this ordinance shall display their licenses in a visible location in the establishment for which the license was issued or the establishment in which the licensees are employed.

13.2 Licenses shall be granted for an initial term ending October 31st, next following the issuance of the license, unless sooner suspended or revoked. Such license must be renewed annually, and any renewal shall be for a term of one (1) year from November 1 to October 31st.

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2 13.3 Renewal applications shall be filed no less than  
3 thirty (30) days before the expiration of any current license.

4 SECTION 14. TRANSFER OF LICENSE.

5 14.1 A licensed massage establishment may be moved  
6 to another location providing:

- 7 (a) The location meets all the requirements of this  
8 ordinance;  
9 (b) The City Controller is notified in writing  
10 within a minimum of thirty (30) days in advance  
11 of the move.

12 SECTION 15. VIOLATION AND PENALTY.

13 15.1 Any licensee under this ordinance violating any  
14 provision thereof shall be subject to license revocation  
15 provisions of Section 11.3 and 11.4.

16 15.2 Any person not holding a license under this  
17 ordinance who violates any provision thereof shall be subject  
18 to a fine not to exceed the sum of One Thousand (\$1,000.00)  
19 Dollars. Each day such violation is committed or permitted  
20 to continue shall constitute a separate violation and a separate  
21 fine of up to One Thousand (\$1,000.00) Dollars may be assessed  
22 for each day up to such violation.

23 SECTION 16. SEVERABILITY.

24 If any section, subsection, paragraph or part of this  
25 ordinance is for any reason held to be unconstitutional or  
26 invalid by any court of competent jurisdiction, such decision  
27 shall not affect the validity or effectiveness of the remaining  
28 portions of this ordinance.

29 SECTION 17. EFFECTIVE DATE.

30 17.1 The amendments to this ordinance shall be in  
31 full force and effect thirty (30) days after its approval by  
32 the Mayor and the legal publication thereof.

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Councilman

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on Regulation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the day of \_\_\_\_\_, 1976, at \_\_\_\_\_ o'clock P.M., E.S.T.

DATE: 10-26-76.

Charles W. Westerman  
CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted, placed on its passage.

PASSED (LOST) by the following vote:

	<del>AYES</del>	<del>NAYS</del>	<del>ABSTAINED</del>	<del>ABSENT</del>	<del>TO-WIT:</del>
<u>TOTAL VOTES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>HINGA</u>	_____	_____	_____	_____	_____
<u>HUNTER</u>	_____	_____	_____	_____	_____
<u>MOSES</u>	_____	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	_____	_____	_____	_____	_____
<u>SCHIMDT, V.</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION)

ORDINANCE (RESOLUTION) No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 1976.

ATTEST: (SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 1976, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

\_\_\_\_\_  
CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 1976, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

\_\_\_\_\_  
MAYOR



*Hold for  
input from  
Morgan & Dee*

Bill No. G-76-10-50

REPORT OF THE COMMITTEE ON REGULATIONS

We, your Committee on Regulations to whom was referred an Ordinance

PROPOSED AMENDMENT TO GENERAL ORDINANCE NO. G-23-76

licensing and regulating massage establishments and related enterprises

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance *Be withdrawn* ~~PASS.~~

VIVIAN G. SCHMIDT - CHAIRMAN

WINFIELD C. MOSES, JR. - VICE CHAIRMAN

WILLIAM T. HINGA

DONALD SCHMIDT

SAMUEL J. TALARICO

*Vivian G. Schmidt*  
*Winfield C. Moses Jr*  
*William T. Hinga*  
*D Schmidt*  
*Samuel J. Talarico*

5-24-77 CONCURRED IN  
DATE            CHARLES W. WESTERNMAN, CITY CLERK */re*



Bill No. G-76-10-50

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John Nuckols - Chairman

Paul M. Burns - Vice-Chairman

Vivian G. Schmidt

Winfield C. Moses, Jr.

Donald J. Schmidt

DIGEST SHEET

TITLE OF ORDINANCE AMEND GENERAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE LAW DEPARTMENT

SYNOPSIS OF ORDINANCE G-76-10-50.

To Amend General Ordinance No. G-23-76

EFFECT OF PASSAGE \_\_\_\_\_

EFFECT OF NON-PASSAGE \_\_\_\_\_

MONEY INVOLVED (Direct Costs, Expenditures, Savings) None

ASSIGNED TO COMMITTEE \_\_\_\_\_

*Regulations  
J.A.*